BORA LASKIN LAW LIBRARY
3 1761 03324 9327

NATIVE PEOPLES LAW

VOLUME II

Patrick Macklem
Faculty of Law
University of Toronto

1990 - 91

Prepared with the Assistance of Karin Eisen, Howard Dancyger and Heather Gamester

LAW LIBRARY

AUG 29 1990

FACULTY OF LAW
UNIVERSITY OF TORONTO

FACULTY OF LAW LIBRARY
UNIVERSITY OF TORONTO

NATIVE PEOPLES LAW

VOLUME II

Patrick Macklem
Faculty of Law
University of Toronto

1990 - 91

Prepared with the Assistance of Karin Eisen, Howard Dancyger and Heather Gamester

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/nativepeopleslaw02mack

VOLUME II

TABLE OF CONTENTS

Page

Chapter V: Family and Child Custody: Customary Law and Legislation

A. Introduction

James S. Frideres, Native People in Canada: Contemporary Conflicts (Scarborough: Prentice Hall, 1983), at 20. 361

Paula Gunn Allen, The Sacred Hoop (Boston: Beacon Press, 1986). 371

R. v. Bear's Shin Bone (1899), 3 C.C.C. 329 378

B. Marrying Out

Indian Act, R.S.C. 1970, c.I-6 380

Lavell v. Attorney General of Canada (1973), 38 D.L.R. (3d) 481 382

Lovelace v. Canada, 36 U.N. GOAR Supp. (No.40) Annex XVIII; U.N. Doc. A/36/40 (1981) 401

Indian Act, R.S.C. 1985, c.I-5 409

Report to Parliament, "Implementation of the 1985 Changes to the Indian Act" (Ottawa: Supply and Services, 1987), pp.8-11. 411

C. Matrimonial Property

Derrickson v. Derrickson (1986), 26 D.L.R. (4th) 175 (S.C.C.) 415

Paul v. Paul, [1986] 3 W.W.R. 210 (S.C.C.) 425

Marlee Kline, "Race, Racism and Feminist Legal Theory" 12 Harvard Women's Law Journal 115 (1988). 428

D. Child Welfare

Natural Parents v. Director of Child Welfare (1975), 60 D.L.R. (3d) 148 (S.C.C.) 433

Racine v. Woods (1983), 1 D.L.R. (4th) 193 (S.C.C.) 450

Wilson v. Young (1983), 28 Sask. L.R. 287 459

Re C.J.W.S., [1987] 1 CNLR S1 (Alta. Q.B.) 462

B.B. v. Director of Child and Family Services (1988), 51 Man. Rep. (2d) 245 (Man. C.A.) 465

B.B. v. Director of Child and Family Services, [1989] 1 S.C.R. 291 470

Emily Carasco, "Canadian Native Children: Have Child Welfare Laws Broken the Circle?" (1986), 5 Can. J. Fam. L. 3. 471

i) Adoption by Band

Tom v. Winnipeg Children's Aid Society (1982), 2 W.W.R. 212 (Man. C.A.) 477

ii) Adoption by Native Family

JTK and LS v. Kenora - Patricia Child and Family Services, [1985] 2 CNLR 76 479

Re Kitchooalik (1972), 28 D.L.R. (3d) 488

Chapter VI: Self Government

A. Introduction

David C. Hawkes and Allan M. Maslove, "Fiscal Arrangements for Aboriginal Self-Government,"in Hawkes & Maslove eds., Aboriginal Peoples and Government Responsibilities, Exploring Federal and Provincial Roles (Ottawa: Carleton University Press, 1989) 492

Oren Lyons, "Traditional Native Philosophies Relating to Aboriginal Rights," Boldt and Long eds., The Quest for Justice: Aboriginal Peoples and Aboriginal Rights (Toronto: University of Toronto Press, 1985) 495

Mary Smallface Marule, "Traditional Government: Of the People, by the People, for the People" Pathways to Self Determination: Canadian Indians and the Canadian State (Toronto: University of Toronto Press, 1984). 498

B. Indian Government Under the Indian Act

Leroy Little Bear, "Indian Government Pursuant to the Indian Act" Pathways to Self Determination: Canadians Indians and the Canadian State (Toronto: University of Toronto Press, 1984). 505

Logan v. Styres (1959), 20 D.L.R. (2d) 416 (Ont. H.C.) 511

R. v. Gingrich (1958), 29 W.W.R. 471 (Alta. App. Div.) 515

Queen v. Devereux (1965), 51 D.L.R. (2d) 546 (S.C.C.) 518

Norwegijick v. The Queen (1983), 83 D.T.C. 5041 (S.C.C.) 523

A.G. of B.C. v. Wale (1987), 9 B.C.L.R. (2d) 333 (B.C.C.A.) 527

C. Indian Government Under Treaties

Frank Cassidy and Robert Bish, Indian Government: Its Meaning in Practice (Lantzville: Oolichan, 1985) 135-154 536

Sannichton Marina Ltd. v. Claxton (1987), 18 B.C.L.R. (2d) 217 (B.C.S.C.) 550

D. Self Government and The Charter

Frank Cassidy and Robert Bish, Indian Government: Its Meaning in Practice (Lantzville, Oolichan, 1989) 160-66 558

Menno Boldt and J. Anthony Long, "Tribal Philosophies and the Canadian Charter of Rights and Freedoms", in Boldt & Long, eds., The Quest for Justice: Aboriginal Peoples and Aboriginal Rights (Toronto, University of Toronto Press, 1985). 562

Brian Slattery, "The Hidden Constitution: Aborignial Rights in Canada" in Boldt & Long, eds., The Quest for Justice: Aboriginal Peoples and Aboriginal Rights (Toronto: University of Toronto Press, 1985). 572

Chapter VII: Some Concluding Thoughts

R. v. Sparrow, unreported S.C.C. judgment rendered May 31, 1990 583

R. v. Hare and Debassige (1985), 20 C.C.C. (3d) 1 (Ont. C.A.) 607

R. v. Arcand, [1989] 2 C.N.L.R. 110 (Alta. Q.B.) 614

R. v. Eninew (1984), 12 C.C.C. (3d) 356 (Sask. C.A.) 621

Dumont v. A.G. Canada (1988), 52 D.L.R. (4th) 25 (Man. C.A.) 623

Eastmain Band v. Gilpin [1988] 3 C.N.L.R. (Que. Prov. Ct.) 634

Paula Gunn Allen, The Sacred Hoop (Boston: Beacon Press, 1986), p.262. 664